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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 149.

NICHOLAS WEBSTER, *Appellant,*

vs.

ALBERT B. FALL, SECRETARY OF THE INTERIOR, J. GEORGE WRIGHT, SUPERINTENDENT OF OSAGE AGENCY, *ET AL.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF *for* APPELLANT.

Statement.

This appeal comes direct to this court under section 238 of the Judicial Code, and on the ground that constitutional questions are involved. The appellant herein filed his bill in equity in the District Court of the United States for the Western District of Oklahoma, on the 9th day of December, 1922, alleging that he was a citizen of the United States, and a member of the Osage Tribe of Indians, living in

Osage County, Oklahoma, in said court district; that he is on the Osage Roll as number 184, and entitled to the rights of an enrolled Osage; that the appellee, Albert B. Fall, as Secretary of the Interior, is in charge of the Osage Indian Agency, acting by and through the appellees, J. George Wright, as Superintendent of the Agency, and Geo. N. Wise, as Special Disbursing Agent for the United States, whose duty it is to pay and disburse the moneys due individual Osages under the laws and authority of the United States; that the appellees, Wright and Wise, were residents of Osage County, Oklahoma, within said court district (R. 2).

This suit is brought to enjoin the appellees, and each of them, from enforcing against the appellant section 2087 of the Revised Statutes of the United States, as well as all orders, regulations and rules, promulgated to carry said section 2087 into effect, and against the appellant, for the reason that the same takes the property and liberty of the appellant without due process of law, and in violation of the 5th Amendment to the Constitution.

The bill alleges that the appellee, J. Geo. Wright, as Superintendent is in charge of the local Osage Agency, and that the appellee, Geo. N. Wise, as Special Disbursing Agent, has a legal duty to perform in paying the appellant and others; that at all times mentioned in the bill the said appellees have sufficient and plenty of funds to make the quar-

terly payments to the appellant, but that the appellees refused to pay the moneys required by the law to be made to the appellant. The bill then set forth the fact that the Osage Tribe of Indians bought and paid for their lands in Oklahoma, out of funds received for the sale of their lands in the State of Kansas; that by the Act of June 28, 1906, the tribal property was divided among the members of the tribe, and that the appellant received thereby a vested property interest in some of the property formerly belonging to the Osage Tribe (R. 3 and 4). That deeds in fee simple were issued to the appellant; that under the Act of June 28, 1906, the appellant had segregated to him in the Treasury of the United States the sum of $3,819.00, which draws interest at the rate of five per centum per annum, same to be paid quarterly to appellant; that said act vested in the appellant a right to receive his pro rata share of the income received by the Osages from oil and gas leases, and that upon the death of the appellant his property, formerly owned by the Osage Tribe of Indians, passed by the act to the heirs of the appellant, and not to the tribe; that the appellant had inherited a one-half interest in the estate of his deceased wife, who was also an allottee of the Osage Tribe; that at all times mentioned in the bill the appellees had ample funds belonging to the appellant to make the payments required by law, and that the same were subject to the command, disposal, check,

and warrant of the appellees, Wright and Wise; that by an Act of March 3, 1921, they were required to pay the appellant the sum of $1,000 quarterly, but that the appellees, Wright and Wise, and each of them, had unlawfully, arbitrarily, and capriciously, withheld such $1,000 payment from the appellant, and had failed and refused to pay the same during the following quarter after the regularly quarterly payment to the Osages, until in July, 1922, there was due and unpaid by virtue of the Act of March 3, 1921, in excess of $3,000.00, which sum had been unlawfully, arbitrarily and capriciously held by said appellees; that there had been a regularly quarterly payment made in September, 1922, and would be another quarterly payment in December of the same year, and other and many quarterly payments to follow until the year of 1946; that the appellant was forty-seven years of age, and in good health, of sound body, and in the natural course of men of his age and physical condition he should live many years in which to receive and enjoy the income to be paid to him quarterly under the Act of March 3, 1921 (R. 4, 5 and 6).

That the appellees, Wright and Wise, were refusing to pay the income due the appellant, because of section 2087 of the Revised Statutes of the United States, and the rules and regulations issued under and by virtue of authority supposed to be and exist in said section 2087; that the section 2087, and all

rules and regulations issued for the enforcement of the same, insofar as said section was intended to apply to the appellant, were in contravention of the 5th Amendment to the Constitution of the United States, and therefore void, for the reason that said section 2087, and the rules and regulations issued thereunder, and the unlawful and capricious acts of the appellees, deprives the appellant of his property and liberty without due process of law.

The appellant prayed for the writ of injunction against the appellees to restrain them from enforcing said section 2087, and the rules, regulations, and all unlawful, arbitrary and capricious acts of the appellees, which deprive the appellant of his property and liberty without due process of law, and that said section 2087, the rules and regulations issued thereunder, and the unlawful, arbitrary, and capricious acts, be adjudged to violate the Constitution of the United States; and, that the appellees be enjoined from refusing to pay to the appellant the $1,000.00 quarterly, as required by the Act of March 3, 1921 (R. 7 and 8).

Service was had on the appellees, J. Geo. Wright and Geo. N. Wise, but not on Albert B. Fall. The appellees, Wright and Wise, answered (R. 9 and 10), admitting the allegations of the bill, except as thereinafter denied or qualified. They denied that the right and controversy involved, exclusive of interest and costs, was of the value of $3,000, claiming that

the amount involved was but $1,770.38; they denied that the money was being held wrongfully, unlawfully, and capriciously; they admitted that they were holding the money due the appellant because of section 2087 of the Revised Statutes of the United States, and because of regulations issued by the Secretary of the Interior under authority of said section 2087. Evidence was adduced at the hearing on bill and answer (R. 11), and the court rendered a decree in favor of the appellees and against this appellant (R. 11), dismissing the bill for want of equity, and upon the merits of the suit. An appeal to this court was allowed.

Evidence.

The court approved a reduced statement of the evidence (R. 11 and 12), from which we find:

> "The petition of the plaintiff was introduced without objection.
>
> "That during a part of the month of July, 1922, the defendants, J. George Wright, Superintendent, and Geo. N. Wise, Disbursing Agent, had under their charge and control $3,030.00 of the moneys belonging to the plaintiff, Nicholas Webster, due the said plaintiff from the $1,000 payments, quarterly, provided for in section 4 of the Act of March 3, 1921, and that said money would have been paid to the said plaintiff, except for the fact that the said plaintiff drinks intoxicating liquors, which were within covenient reach of the plaintiff, and the plaintiff was

being carried by the defendants on a 'drunk list' carried as part of the records of the Osage Agency; that at the time this suit was instituted by the plaintiff in December, 1922, there was due to the plaintiff from the defendants, from the source aforesaid, $1,770.38, and that another payment of $1,000 was available on the 18th day of December, 1922; that during the period from March 3, 1921, to December 9th, 1922, the date this suit was instituted, the total income of the plaintiff carried on the books and records of the defendants was in excess of $20,000, and that the defendants at all times had available moneys of the plaintiff to pay the $1,000 quarterly, provided for in the Act of March 3, 1921, and that said payments provided for in the Act of March 3, 1921, would have been made to the plaintiff by the defendants, J. George Wright, Superintendent, and George N. Wise, Disbursing Agent, except for section 2087 of the Revised Laws of the United States, and regulations issued to carry into effect said section; that the plaintiff is a full-blood member and allottee of the Osage Tribe of Indians, and without a certificate of competency provided for in the Act of June 28, 1906, allotting the Osages" (R. 11 and 12).

ASSIGNMENT *of* ERRORS.

Now on this 29th day of July, 1923, comes the above named plaintiff, by his solicitor, Preston A. Shinn, and says that the decree in the above entitled suit made and entered on the 17th day of May, 1923, against the plaintiff and in favor of the defendants, is erroneous and unjust to the plaintiff, and for the following reasons:

1. The court erred in finding the issues in favor of the defendants.

2. The court erred in rendering a decree in favor of the defendants and against the plaintiff.

3. The court erred in holding that section 2087 of the Revised Statutes of the United States is a valid law insofar as said section was intended to apply to this plaintiff on the 3rd day of March, 1921, or at any time thereafter.

4. The court erred in holding that the acts of the defendants in withholding the moneys mentioned in plaintiff's petition, did not violate the constitutional rights of the plaintiff, as preserved and protected by the 5th Amendment to the Constitution of the United States.

5. The court erred in holding that the acts and conduct of the defendants, in withholding the moneys and funds belonging to the plaintiff, did not de-

prive the plaintiff of his property without due process of law as guaranteed in the 5th Amendment to the Constitution of the United States.

6. The court erred in holding that the acts and conduct of the defendants, in withholding the moneys and funds belonging to the plaintiff, did not deprive the plaintiff of his liberty without due process of law as guaranteed in the 5th Amendment to the Constitution of the United States.

7. The court erred in holding that section 2087 of the Revised Laws of the United States, or the rules and regulations issued by the Secretary of the Interior of the United States, under authority of said section 2087, and enforced by the defendants against this plaintiff, did not deprive the plaintiff of his property and his liberty in violation of the 5th Amendment to the Constitution of the United States.

8. The court erred in not holding that section 2087 of the Revised Laws of the United States, if applied to this plaintiff, and all rules and regulations issued for its enforcement, if applied to this plaintiff, and the acts, conduct, and refusal of the defendant officers of the United States in enforcing said section 2087 and said rules and regulations, and in withholding the moneys and property of this plaintiff from the plaintiff, were in violation of the 5th Amendment to the Constitution of the United States.

9. The court erred in holding that section 2087 of the Revised Laws of the United States, and the rules and regulations issued thereunder, were within the authority granted by the people in the Commerce Clause, or any other section or clause, of the Constitution of the United States.

10. The court erred in refusing to issue the injunction prayed for in the petition of the plaintiff.

Wherefore, the plaintiff prays that the said decree be reversed, and the District Court directed to issue said injunction against the defendants, as prayed for in the petition of the plaintiff, and that the plaintiff may have all other relief which to the court may seem just and proper, the premises considered.

ARGUMENT.

The property and money involved belongs to Webster, and any law or regulation, or arbitrary act by federal officials in charge thereof, that would deprive Webster of his property, without notice and hearing, is in violation of the 5th Amendment to the Federal Constitution.

Under treaty of September, 1865, the Osages conveyed their lands in the State of Kansas to the United States, as trustees for the purpose of sale, and from the sales made there was placed in the Treasury of the United States something over $8,000,000.00 to the credit of the Osage Tribe of Indians. From the sales of those lands there was used something over $1,000,000.00 in the purchase of the Osage lands in Oklahoma. The moneys placed in the Treasury drew interest at the rate of five per centum per annum, payable to the tribe as a tribe, and not to the individual member *(Stewart* v. *Osage Tribe,* 206 U. S. 192). By the Act of June 28, 1906 (34 Stat. 539), Congress provided for the allotment of the Oklahoma lands to the individual members of the tribe, after having provided for an official roll of membership, and issued to the members deeds in fee simple, with restrictions against alienation, unless a certificate of competency was issued upon the application of the individual member (seventh paragraph of Sec. 2). The certificate of competency had

to do only with the surplus allotted lands of the individual, giving the right to "manage, control, and dispose" thereof. Section 4 of the act provided that the moneys held by the United States for the Osage Tribe, should be *segregated* and "placed to the credit of the individual members of said Osage Tribe on a basis of a pro rata division among the members of said tribe, as shown by the authorized roll of membership as herein provided for, *or to their heirs* as hereinafter provided, said credit to draw interest as now authorized by law, and the interest that may accrue thereon *shall be paid quarterly to the members entitled thereto*" (italics by counsel).

Section 4, further provided, "that the royalty received from oil, gas, coal and other mineral leases * * *, shall be placed in the Treasury of the United States to *the credit of the members of the Osage Tribe* of Indians as *other moneys* of said tribe are to be deposited under the provisions of this act, *and the same shall be distributed to the individual members* of said tribe according to the roll provided for herein, *in the manner and at the same time* that payments are made of interest on other moneys held in trust for the Osages" (italics by counsel).

Section 6 provides, "that the lands, moneys, *and mineral interests, herein provided for,* of any deceased member of the Osage Tribe shall descend to his or her *legal heirs,* according to the laws of," what is now Oklahoma (italics by counsel).

On April 18, 1912, there was approved an Act supplementing and amending the Act of June 28, 1906, which will be referred to later. This appellant drew his entire income provided for in the Act of 1906, until in March, 1921, Congress further spoke on the subject. By the Act of March 3, 1921 (41 Stat. 1249), and in section 4 thereof, Congress provided:

> "That from and after the passage of this act the Secretary of the Interior shall cause to be paid *at the end of each fiscal* quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe *or heir* of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, *and so long as the income is sufficient* to pay to the adult members of said tribe not having a certificate of competency $1,000 *quarterly* except where incompetent adult members have legal guardians, in which case the income of such incompetent shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge $500 quarterly out of the income of said minors *all* of said *quarterly payments* to legal guardians *and adults, not having certificates of competency* to be paid under the supervision of the Superintendent of the Osage Agency * * *" (italics by counsel).

The appellant herein is without a certificate of competency, and under the foregoing section Con-

gress said he was to receive $1,000 "quarterly." True, under this section he was to receive same to be paid under the supervision of the Superintendent, but he is to receive it all, and not a part. The section says that those with certificates are to receive their entire income, and not under supervision, but that Webster is to receive $1,000. Not the amount the Superintendent thinks he should have, but $1,000. The Superintendent may supervise, and pay the amount in full at one payment, or make partial payments of same, but at the close of the "quarter" following the payments to those having certificates, if the entire amount of $1,000 has not been paid to Webster, he is entitled under the act to receive all the balance. The act says that *"all of said quarterly payments"* are to be paid "under the supervision of the Superintendent." The first part of the section says that "the Secretary of the Interior *shall cause* to be paid at the end of each fiscal quarter * * *, *and so long as* the income is sufficient" to pay Webster *"$1,000 quarterly."* The record in this case shows that at the time the appellant instituted this suit the defendants had of his funds "in excess of $20,000, and that the defendants at all times had available moneys of the plaintiff to pay the $1,000 quarterly, provided for in the Act of March 3, 1921" (R. 12). These quarterly payments are made in March, June, September, and December, of each year. The record shows that in July, 1922, the defendants were hold-

ing $3,030 of the appellant's moneys due from these quarterly payments of $1,000, although the Act of 1921, had only been in effect about fifteen months, and there was due him on the day the suit was brought, December 9, 1922, $1,770.38, with another payment due in nine days, or $2,770.38.

The bill alleged and the answer admitted that these moneys were not paid to the appellant because of section 2087 of the Revised Laws of the United States, and the rules and regulations of the Secretary. On March 3, 1847, Congress passed an act (9 Stat. 203), section 3 of which act, with a few minor changes, was carried in the revision of 1873, into the Revised Laws in two sections, 2086, 2087, as follows:

> "*2086.* The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, *shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:*
>
> "*First. To the chiefs of a tribe, for the tribe.*
>
> "*Second.* In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, *then to such person as the tribe* shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

"*Third.* To the heads of families and to the individuals entitled to participate in the moneys or goods.

"*Fourth.* By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe, *and will encourage able bodied Indians in the habits of industry and peace.*"

"*2087.* No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquors, *nor while there are good and sufficient reasons leading the officers or agents,* whose duty it may be to make such payments or distribution, *to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country*" (italics by counsel).

In arriving at the meaning of section 2087, this court will also look to section 2086, as they were formerly one section. See, *Buck Stove & Range Co.,* v. *Vickers,* 226 U. S. 205, 213; *Hyde* v. *U. S.,* 225 U. S. 360, 361; *Anderson* v. *Pacific Coast Steamship Co.,* 225 U. S. 187, 189.

The Act of April 18, 1912 (37 Stat. 86), is entitled "An Act supplementary to and amendatory of the act entitled 'An act for the division of the lands and funds of the Osage Nation of Indians in Oklahoma,' approved June twenty-eighth, nineteen hundred and six, and for other purposes." The 1912 Act supplementing the 1906 Act, recognizes "individual property" throughout the act. It provides for the paying out of the funds held in trust (Sec. 5); for the partition of individual allotments of deceased Indians (Sec. 6); for the conveying of "any or all of his estate, real, personal, or mixed, including trust funds, from which restrictions as to alienation have not been removed, by will" (Sec. 8), and, provides in section 11, *"that all acts or parts of acts inconsistent herewith be, and the same hereby are, repealed."*

The Acts of 1906 and 1912 have to do with individual vested property, while section 2087 of the Revised Laws has to do with tribal property. The Osage Acts are complete in themselves, and they provide for the paying out of funds, with nothing said as to intoxicating liquors. The section 2087 was for the purpose of paying out funds and goods *of the United States* to the Indians, and was not intended to apply to cases where the United States was paying out individual vested moneys to Indians. We submit that section 2087, insofar as the appellant is concerned, was repealed by the Acts of 1906 and 1912.

Section 2086 provides that all moneys shall be paid "as the President or the Secretary of the Interior may direct." But Congress, by the Acts of 1906 and 1912, *supra,* have directed otherwise.

Under section 2086 payment may be made to the chiefs of the tribe for the tribe. But under the Acts of 1906 and 1912 the moneys must be paid to the *individual Osage, or his heirs.*

Under section 2086 payments may be made to such person as the *tribe may appoint.* But under the Act of 1906 the tribe has no interest in money due an individual Osage.

Under section 2086, by consent of the tribe and the Secretary of the Interior, payment may be diverted to purposes tending to promote their happiness and prosperity, "and encourage able bodied Indians in the habits of industry and peace." Under the Act of 1906 neither the tribe nor Secretary can divert the moneys vested in the individual Osages. And being citizens of the United States, they are a peaceful, civilized people.

The method of payment of "all moneys" to Indians having been prescribed by section 2086, the following section 2087, which also relates to Indians generally, provides that "no moneys shall be paid" thereunder, where any of the following conditions exist:

1. *While they are under the influence of liquor.* But the Act of 1906 authorizes the withholding of

payment for but one cause only, *viz.*, the squandering by a parent of a minor's money.

2. *Where there are good and sufficient reasons to believe that there is intoxicating liquor within convenient reach.* But the Act of 1906 commands that payments *shall be made quarterly,* and that duty cannot be defeated by the presence, or suspected presence, of a bootlegger in the vicinity. Section 2087 leaves the definition of "convenient reach" to the officer making the payment. We now have a twelve-mile limit fixed by treaty with England, but the officer may think that distance too convenient.

3. *Nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.* The Osages have no region which can be designated "their country," as their former reservation is now Osage County, Oklahoma, and it is the duty of the governments, federal and state, to enforce the laws in that county. There are no longer any chiefs and headmen in the sense in which that term is used in section 2087. The chief and the Osage Council have but one duty to perform, and that is the leasing of oil and gas lands for their "shareholders."

Section 2087 makes no attempt to provide for notice and hearing, but only for the suspicion of the officer making the payment. The local Indian Agency have a few "Indian Constables" or farmers, and

if one of these men reports adversely, or for some reason does not like some particular individual, the Indian may find himself on a *"drunk list,"* and this without notice or hearing. Justice MATTHEWS must have had the future in mind, when he said, for this court:

> "For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, *as being the essence of slavery itself.*"
>
> —*Yick Wo* v. *Hopkins,* 118 U. S. 356, 374;
>
> *Truax* v. *Corrigan,* 257 U. S. 331.

The law must provide within its words for due process, and not leave that right to the caprice and whims of others. In *Coe* v. *Armour Fert. Works,* 237 U. S. 424, 425, this court said:

> "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same results because he had no adequate defense upon the merits. *Rees* v. *Watertown,* 19 Wall. 107, 123."

See also *L. & N. Ry. Co.* v. *Central Stock Yards Co.,* 212 U. S. 132, 144.

If section 2087, when applied to the appellant, is unconstitutional; if the section has been repealed as to the Osages; or, if the appellees insisting that

they have the authority, under the section, but are transcending its bounds, and unlawfully assuming to exercise the power of government against the appellant, thereby depriving him of his property without due process of law, the injunction should issue. See *American School* v. *McAnnulty*, 187 U. S. 94; *Noble* v. *Union River Logging R. Co.*, 147 U. S. 165, 172; *Philadelphia Co.* v. *Stimson*, 223 U. S. 619, 622; *Lane* v. *Hogland*, 244 U. S. 181; *Waite* v. *Macey*, 246 U. S. 606, 607; *John Hill, Jr.*, v. *Wallace, et al.*, 259 U. S. 60, 72; *Garfield* v. *Goldsby*, 211 U. S. 261.

In *Philadelphia Co.* v. *Stimson, supra*, this court, speaking through Mr. Justice HUGHES, said:

> "If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded * * *. And in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments * * *. And it is *equally applicable to a* federal officer acting *in excess of his authority or under an authority not* validly conferred" (italics by counsel).

And further:

> "It is urged that the statute authorizing the

Secretary of War to prevent encroachments upon navigable streams is a valid one, and that the decisions cited do not apply. The validity of the statute is not attacked, because of the assumption that it is not to be construed to contemplate or authorize the alleged deprivation of property. Where the officer is proceeding under an unconstitutional act, its invalidity suffices to show that he is without authority, and it is this absence of lawful power and his abuse of authority in imposing or enforcing, in the name of the state, unwarrantable exactions or restrictions, to the irreparable loss of the complainant, which is the basis of the decree. *And a similar injury may be inflicted, and there may exist ground for equitable relief, when an officer, insisting that he has the warrant of the statute, is transcending its bounds, and thus unlawfully assuming to exercise the power of government against the individual owner,* is guilty of an invasion of private property" (italics by counsel).

Where the rules and regulations issued by the Secretary of the Interior and under which the appellees, Wright and Wise, are withholding the funds from the appellant are void, they are acting without authority, and it is not necessary to get service on the Secretary. *American School* v. *McAnnulty,* 187 U. S. 97; *John Hill, Jr.,* v. *Wallace, et al.,* 259 U. S. 44, 72.

A law may be valid when enacted, and later become invalid. Also, it may be valid as to some and void as to others. See *Galveston Electric Co.* v. *Gal-*

veston, 258 U. S. 400, 401; *Hamilton* v. *Kentucky Distil.,* 251 U. S. 162; *Dahnke-Walker* v. *Bondurant,* 257 U. S. 289.

Indians and their property are protected by the provisions contained in the 5th Amendment to the Federal Constitution. See *Choate* v. *Trapp,* 224 U. S. 665, 679; *Ward* v. *Love County,* 253 U. S. 19, 20; *Jones* v. *Meehan,* 175 U. S. 1.

Jurisdiction.

This record shows that in July, prior to the bringing of this suit by Webster in December, the appellees were holding $3,030 due the appellant; that at the time the suit was instituted they owed him the sum of $1,770.38, with another quarterly payment due within a few days; that his total income from March 3, 1921, to December 9, 1922, was in excess of $20,000 (R. 11 and 12). It is admitted by the answer that the appellant was at that time forty-seven years of age, and in good health, and that these quarterly payments to the appellant would probably continue until 1946, the date when the mineral reservation terminates; that the appellant would in the natural course of events live for many years yet to come. The appellees had at one time held in excess of the jurisdictional amount from appellant. If they have the authority to withhold these funds, then as a matter of law they do not need to stop with $3,030.00, but can withhold each and every payment from the

appellant. Since the date of hearing there has been added to the $20,000 as much as $15,000 in addition. Should the amount never grow larger, but income into the hands of the appellees for the appellant would cease, there would be at least $30,000 to be paid out to appellant in quarterly payments of $1,000 each. If they have the authority the appellees can hold every cent of that amount from the appellant, and this without notice and hearing of any character. The amount involved to the appellant is greatly in excess of the jurisdictional amount. See *Scott* v. *Donald*, 165 U. S. 107, 117; *Bitterman* v. *Louisville & N. Ry. Co.*, 207 U. S. 225; *Glenwood Light Co.* v. *Mutual Light Co.*, 239 U. S. 125; *Western & Atlantic Ry.* v. *Railroad Com.*, 261 U. S. 264, 266.

In *Scott* v. *Donald, supra*, this court said:

> "A controversy exceeding the value of $2,000 is presented in a suit for an injunction, where complainant intends to import certain liquors exceeding $2,000 in value, and defendants have seized some thus imported, and threatened to seize all that he shall import, *under an unconstitutional statute*" (italics by counsel).

We respectfully submit that the section 2087, and the rules and regulations issued thereunder, insofar as they are intended to apply to the appellant, are in violation of his rights under the 5th Amendment to the Federal Constitution; that the acts and conduct of the appellees in withholding the payments

from the appellant are arbitrary and capricious, and in violation of his rights under the 5th Amendment to the Federal Constitution, and that the District Court for the Western District of Oklahoma should have issued the injunction as prayed for. We respectfully pray a reversal of said decree, and that that court be instructed by this court to issue said injunction.

Respectfully submitted,

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Attorney for Appellant.